

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TRISTRATA TECHNOLOGY, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 06-644(JJF)
	)	
LOUISE BIANCO SKIN CARE, INC.,	)	
MEDICAL SKIN THERAPY RESEARCH,	)	
INC., REVISION SKIN CARE, INC. and Z	)	
COSMETICA USA, LLC.	)	
	)	
Defendants.	)	

**PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT  
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff Tristrata Technology, Inc. (“TTI”), by and through its counsel, respectfully moves this Court for a default judgment against Defendant Louise Bianco Skin Care, Inc. (“LBSCI”), pursuant to Federal Rule of Civil Procedure 55.

**MOTION FOR DEFAULT JUDGMENT**

1. On October 17, 2006, Plaintiff filed its Complaint against Defendant LBSCI.
2. On February 21, 2007, TTI served LBSCI pursuant to 10 Del. C. § 3104 – by serving, the Secretary of State pursuant to 10 Del. C. § 3104, filed the executed return of service with the Court, and caused a copy of the Complaint, the summons for LBSCI, and a letter addressed LBSCI, to be forwarded to LBSCI via registered mail return receipt requested. A copy of the letter and registered mail receipt are attached hereto as Exhibit A. A copy of the confirmation and tracking form received from the United States Postal Service is attached hereto as Exhibit B.

3. On April 2, 2007, Arthur G. Connolly, III on behalf of TTI, filed an Affidavit of Mailing pursuant to 10 Del. C. § 3104 and D. Del. LR 4.1(b), in which the details of service are described. A copy of the Affidavit is attached hereto as Exhibit C.

4. LBSCI was required under Fed. R. Civ. P. 12(a)(1)(A) to file an answer to the Complaint within twenty (20) days of service or by no later than April 23, 2007.

5. To date, LBSCI has not answered or otherwise responded to the Complaint nor has an appearance been entered on LBSCI's behalf.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Enter a default judgment against LBSCI pursuant to Fed. R. Civ. P. 55 on all counts of the Complaint;

B. Grant Plaintiff a period of time for discovery to determine the amount of damages;

C. Grant Plaintiff attorney's fees and costs;

D. Schedule a hearing to determine the amount of damages, including attorney's fees and costs; and

E. Award to Plaintiffs such other and additional relief as this Court deems just and proper.

**INCORPORATED MEMORANDUM OF LAW**

As noted in the Exhibits attached hereto, LBSCI was served with the summons and Complaint on February 21, 2007. To date, LBSCI e has not answered the Complaint nor entered an appearance in this action. Because LBSCI's answer was due on or before April 23, 2007, it is clear that LBSCI is in default and judgment should be entered against it.

Plaintiff thus respectfully requests that this Court enter a default judgment against LBSCI in the manner set forth above.

Dated: May 2, 2008

Respectfully submitted,

/s/ Arthur G. Connolly, III

Arthur G. Connolly, III (#2667)  
CONNOLLY BOVE LODGE & HUTZ LLP  
The Nemours Building  
1007 N. Orange Street  
P.O. Box 2207  
Wilmington, DE 19899  
(302) 658-9141

Of Counsel:  
Michael O. Warnecke  
Douglas L. Sawyer  
PERKINS COIE  
131 South Dearborn Street  
Suite 1700  
Chicago, IL 60603-5559

Kevin M. McGovern  
Brian T. Foley  
McGOVERN & ASSOCIATES  
545 Madison Avenue, 15th Floor  
New York, New York 10022  
(212) 688-9840

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 2, 2008, the foregoing document was served via First-Class U.S. Mail and CM/ECF on the following counsel of record:

Louise Bianco, President Louise Bianco Skin Care, Inc. 13655 Chandler Boulevard Sherman Oaks, CA 91401	
Brenda Purdy, President Medical Skin Therapy Research Inc. P.O. Box 231268 Encinitas, CA 92023	
John Muller, President Revision Skincare Inc. 9019 Premier Row Dallas, TX 75247	TEPLEN & ASSOCIATES, PLLC Philip H. Teplen, Esq. Empire State Building 350 Fifth Avenue, 57 <sup>th</sup> Floor New York, NY 10118
Philip Zellner Z Cosmetics USA, LLC 1650 New Highway Farmingdale, NY 11735	

/s/Arthur G. Connolly, III  
Arthur G. Connolly, III (#2667)

# **EXHIBIT A**



**CONNOLLY BOVE LODGE & HUTZ LLP**

ATTORNEYS AT LAW

WILMINGTON, DE

Arthur G. Connolly, III  
Partner

DIRECT DIAL: (302) 888 6318  
DIRECT FAX: (302) 658 0380  
EMAIL: AConnollyIII@cblh.com  
REPLY TO: Wilmington Office

The Nemours Building  
1007 North Orange St.  
P.O. Box 2207  
Wilmington, DE 19899  
TEL: (302) 658 9141  
FAX: (302) 658 5614  
WEB: www.cblh.com

February 21, 2007

**REGISTERED MAIL**  
**RETURN RECEIPT REQUESTED**

Louise Bianco, President  
Louise Bianco Skin Care, Inc.  
13655 Chandler Boulevard  
Sherman Oaks, CA 91401

Re: *Tristrata Technology, Inc. v. Louise Bianco Skin Care, Inc., et al.*, C.A. No. 06-644

Dear Madam:

Please find enclosed copies of the Summons and Return of Service and the Complaint and Jury Demand for the above-referenced case. The Summons and Complaint were served upon the Delaware Secretary of State on February 13, 2007. Pursuant to 10 Del. C. § 3104, such service is as effective for all intents and purposes as if it had been made upon you personally within the State of Delaware.

Sincerely,

Arthur G. Connolly, III

Enclosures

#522850\_1

**EXHIBIT A**

Registered No.

RB. 972 232 255 45.

Date Stamp

To Be Completed  
By Post Office

Reg. Fee	7.90	
Handling Charge		Return Receipt 1.85
Postage	6.05	Restricted Delivery
Received by	REM	

Customer Must Declare  
Full Value \$

9

☐ With Postal Insurance  
☒ Without Postal Insurance

Domestic Insurance up to \$25,000 is included in the fee. International indemnity is limited. (See Reverse).

**OFFICIAL USE**To Be Completed By Customer  
(Please Print)  
All Entries Must Be in Ballpoint or Typed

FROM	AGC 3 (5077*14)
	Connolly, Bove, Lodge Hutz
	P.O. Box 2207
	Wilm DE. 19801
TO	Louise Bianco
	Louise Bianco Skin Care, Inc.
	13655 Chandler Blvd.
	Sherman Oaks CA 91401

PS Form 3806,

Receipt for Registered Mail

Copy 1 - Customer

May 2004 (7530-02-000-9051)

(See Information on Reverse)

For domestic delivery information, visit our website at [www.usps.com](http://www.usps.com)®

## **EXHIBIT B**



**EXHIBIT B**

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY									
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<table border="1"> <tr> <td>A. Received by (Please Print Clearly)</td> <td>B. Date of Delivery</td> </tr> </table>		A. Received by (Please Print Clearly)	B. Date of Delivery						
A. Received by (Please Print Clearly)	B. Date of Delivery									
1. Article Addressed to: Louise Bianco, Pres. Louise Bianco Skin Care Inc 13655 Chandler Blvd. Sherman Oaks, Ca. 91401	<table border="1"> <tr> <td colspan="2">C. Signature</td> </tr> <tr> <td><i>X Louise Bianco</i></td> <td> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee         </td> </tr> <tr> <td colspan="2">D. Is delivery address different from item 1? <input type="checkbox"/> Yes</td> </tr> <tr> <td colspan="2">If YES, enter delivery address below: <input type="checkbox"/> No</td> </tr> </table>		C. Signature		<i>X Louise Bianco</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	D. Is delivery address different from item 1? <input type="checkbox"/> Yes		If YES, enter delivery address below: <input type="checkbox"/> No	
C. Signature										
<i>X Louise Bianco</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee									
D. Is delivery address different from item 1? <input type="checkbox"/> Yes										
If YES, enter delivery address below: <input type="checkbox"/> No										
2. Article Number (Copy from service label) RB 972 232 255 US	<table border="1"> <tr> <td colspan="2">3. Service Type</td> </tr> <tr> <td> <input type="checkbox"/> Certified Mail  <input checked="" type="checkbox"/> Registered  <input type="checkbox"/> Insured Mail         </td> <td> <input type="checkbox"/> Express Mail  <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> C.O.D.         </td> </tr> <tr> <td colspan="2">4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</td> </tr> </table>		3. Service Type		<input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Insured Mail	<input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes			
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4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes										

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

## **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TRISTRATA TECHNOLOGY, INC. )

Plaintiff, )

v. )

LOUISE BIANCO SKIN CARE INC., MEDICAL )  
SKIN THERAPY RESEARCH, INC., REVISION )  
SKIN CARE, INC. and Z COSMETICA USA, )  
INC. )

Defendants. )

Civil Action No. 06-644 (JJF)  
Jury Demanded

**AFFIDAVIT OF MAILING PURSUANT TO 10 DEL. C. § 3104 AND D. DEL. LR 4.1(b)**

ARTHUR G. CONNOLLY, III, after first being duly sworn, on this 2<sup>nd</sup> day of April, 2007, does depose and say:

1. I am an attorney with the law firm of Connolly Bove Lodge & Hutz LLP and represent plaintiff in the above captioned action.

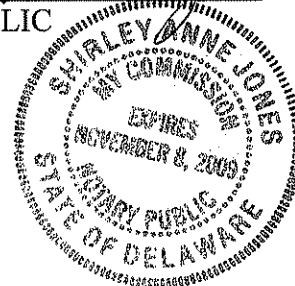
2. On February 21, 2007, I caused a copy of the Complaint, the Summons for Defendant Louise Bianco Skin Care, Inc., and a letter addressed to Louise Bianco, President, Louise Bianco Skin Care, Inc., and containing the information required by 10 Del. C. § 3104, to be forwarded, via Registered Mail Return Receipt Requested, to defendant Louise Bianco Skin Care, Inc., pursuant to 10 Del. C. § 3104. The Registered Mail receipt for said package is attached hereto as Exhibit "A".

3. On or about March 8, 2007, the package referenced in paragraph 2, was received by Louise Bianco Skin Care, Inc. The confirmation/tracking form received from the United States Postal Service is attached hereto as Exhibit "B".

Arthur G. Connolly, III  
Arthur G. Connolly, III (#2667)

Sworn to and subscribed before me this 2<sup>nd</sup> day of April, 2007.

Shirley Anne Jones  
NOTARY PUBLIC



530395\_1

**EXHIBIT A**

<b>Registered No.</b> RB. 972 232 255 US.		<b>Date Stamp</b>	
<b>To Be Completed By Post Office</b>	Reg. Fee	7.90	
	Handling Charge	Return Receipt	1.85
	Postage	Restricted Delivery	
	Received by <i>REM</i>		
	Customer Must Declare Full Value \$	<input type="checkbox"/> With Postal Insurance <input checked="" type="checkbox"/> Without Postal Insurance	
Domestic Insurance up to \$25,000 is included in the fee. International Indemnity is limited. (See Reverse).			
<b>OFFICIAL USE</b>			
<b>To Be Completed By Customer (Please Print) All Entries Must Be in Ballpoint or Typed</b>	<b>FROM</b>	AGC 3 (5077*14) Connolly, Bove, Lodge Hutz P.O. Box 2207 Wilm DE. 19801	
	<b>TO</b>	Louise Bianco Louise Bianco Skin Care, Inc. 13655 Chandler Blvd. Sherman Oaks CA 91401	

PS Form 3806, **Receipt for Registered Mail** Copy 1 - Customer  
 May 2004 (7530-02-000-9051) (See Information on Reverse)  
 For domestic delivery information, visit our website at [www.usps.com](http://www.usps.com)®

**EXHIBIT B**

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Received by (Please Print Clearly) B. Date of Delivery	
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		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Copy from service label) RB 972 232 255 US			
PS Form 3811, July 1999		Domestic Return Receipt 102595-99-M-1789	